Wood (H. C.)

NOSTRUMS

BY H. C. WOOD, M.D.
PHILADELPHIA, PA.

REPRINTED FROM
THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION
APRIL 29, 1899.

CHICAGO
AMERICAN MEDICAL ASSOCIATION PRESS
1899

NOSTRUMS.*

BY H. C. WOOD, M.D.

Very properly, in strict accordance with its etymologic significance, old Dr. Johnson defined nostrum to be "a medicine not yet made public, but remaining in some single hand," but under the present heading I propose to widen out the inquiry of the hour into a more general examination and review of the use in the United States of medicines extrapharmacopeial in their relations, and more or less secret or proprietary in their origin.

Time was when the business of pharmacy partook of the nature of a profession, but more and more is the old apothecary shop becoming a mere distributing store, requiring little more scientific knowledge for its management than does the corner grocery. At one time 80 per cent. of the receipts of the druggist were from preparations made or prescriptions compounded in his own laboratory or shop. In 1890, Mr. M. N. Kline made an inquiry based upon the sales of the large wholesale druggists, and found that out of one hundred consecutive orders 58 per cent. were of patented and proprietary articles, 6 per cent. were pharmaceutic preparations, about 1 per cent. were packeted goods, the remainder apparently being crude drugs; or, taking the purchases for three months by five representative druggists, who bought their supplies from one store, 64 per cent. were patented and proprietary articles, about 1 per cent. packeted goods, leaving 35 per cent. as the proportion of legitimate pharmaceutic

*Read at Centennial Meeting of Medical and Chirurgical Faculty of Maryland, Baltimore, April 25–28, 1899.

preparations and crude drugs. This would indicate that about 40 per cent. of the sales of the retailer are connected with legitimate pharmacy.

No one can have watched the progress of this matter without being convinced that the sale of extra-pharmacopeial remedies and nostrums is year by year steadily increasing. In order to get another view of the subject, I addressed the following questions to sundry druggists: What, judging from your experience, is the proportion between the sales in the average Philadelphia drug store of: 1, physicians' prescriptions; 2, drugs and their preparations, not proprietary nor patent; 3, proprietary or patent medicines?

The replies received have not been very numerous or very satisfactory, but they show that the percentage of patent and proprietary medicines sold varies greatly in different retail stores, and is large almost in proportion to the modern character of the store; there being still left in Philadelphia a few old-time apothecaries who have been able to bring down from the past a legitimate trade for prescriptions and drugs, in which the proprietary medicines form but a small part. According to the answers I received, in the modern drug store the proprietary articles appear to constitute from 50 to 60 per cent. of the sales.

The magnitude of the change is further shown in the fact that twenty years ago there were in the city of Philadelphia about thirty wholesale drug stores; to-day, I am informed there are but six, not including those who sell medicines not to the drug trade, but to country stores. More than this, according to a member of a successful firm, most of these wholesale drug stores are kept alive by their own specialties, a purely distributing house being almost unknown; and three-fourths of the business is further said to be the selling, not of standard drugs, but of proprietary articles.

If the business changes which we have noted consisted simply of the lessened sale of drugs, and showed that the world was taking less medicine than twenty years ago, there might be reason for congratulation

and hope of progress, but the changes which have taken place would seem to be not a diminished output of medicine, but the substitution for the true and known of the untrue and unknown. Surely there is more hope for a nation that takes quinin than for one that lives on vermin killer or health pills.

It is generally believed that the proprietary and patent medicine business is one which invariably yields great receipts; careful inquiry, however, seems to show that this is a mistake, that it is a speculative rather than a legitimate business, one which does not yield a larger percentage for the investment than do the ordinary occupations of life, but which, like a huge lottery, gives great but barren promises to the many, and to the few money prizes which dazzle the eyes of the multitude. Careful inquiry among those who are thoroughly familiar with the patent-medicine business shows that in this country, within the last twenty years, not more than fifty persons have succeeded in making fortunes out of it; rarely have these fortunes exceeded $100,000, and in not more than half a dozen cases have they reached a million dollars. The profits of the business are enormous; the amount of business which has been done gigantic; where then have the profits gone? Into the newspapers and magazines, lay and medical! Thousands of persons have been ruined by advertising beyond their means, and not having sufficient capital to meet the obligations they had incurred, have passed into bankruptcy.

Almost every drug store in America has its own so-called "specialties," which are of the nature of proprietary medicines; but leaving these out of sight, there are about three hundred firms or companies who do business on a large enough scale to be called "proprietors." Of these three hundred, we are informed by competent authority, fifty spend $20,000 to $100,000 a year in advertising, twenty from $300,000 to $500,000 a year, the balance from $10,000 to $20,000 a year; making in all, as closely as can be determined,

between fourteen to fifteen millions yearly spent in the advertising of nostrums. This stream of gold passes into the exchequers of the newspapers, the magazines and the advertising agents; cause it to cease, and a considerable proportion of the newspapers and of the medical journals of the United States would cease to live; a consummation most devoutly to be prayed for. If there were only a half dozen medical journals published in the United States, if every doctor who wrote an article that had not novelty or other valuable quality in it should be beheaded within a fortnight, what a blessed world would it be to live in, but how soon would the profession be depleted!

It is a matter of great interest to know what proportion of the nostrums swallowed by the public are purveyed through the medical profession. It is probably impossible to get accurate statistics, but a gentleman who is connected with one of the largest distributing houses in the United States, and who has paid especial attention to this subject, estimates for me that about 10 per cent. of the whole patent medicine and proprietary trade is carried on through the physicians. This estimate seems to me under rather than over the truth.

We, as members of the medical profession, and especially those of us connected with the medical press, are accustomed to inveigh against newspapers, secular and religious, for accepting the advertisements of patent and proprietary medicines, whereas in truth, unless the pot be warranted in calling the kettle black, we ought to keep silence with shamefacedness.

All dealers in medicines of the class under consideration with whom I have come in contact are concordant in asserting that the most successful proprietary remedies of the day are those which are chiefly or often solely distributed through the physicians; and in my own consulting practice I have been astounded to so often find men of good repute and standing using drugs of whose nature they have no

knowledge; there certainly has been of late years a rapid growth among physicians of the habit of prescribing proprietary medicines.

The ease of prescription, and the readiness of administration of the modern tablet is undoubtedly doing much in increasing the use of nostrums. If the user of the tablet could by its use simplify his practice, it would be well. If he would have tablets of strychnin, tablets of cocain, tablets of digitalis and tablets of nitroglycerin, he might escape from polypharmacy and really become more scientific and successful in obtaining results; but in the majority of cases the tablet links itself with polypharmacy. The cardiac stimulant tablet will contain nitroglycerin, whose action is over in twenty-five minutes, and digitalis, whose influence can not be felt under five or six or more hours; or as in instances which we have known, he will have the nitroglycerin combined with iodids, bromids, and half a dozen other remedies having no relation one with the other, and perchance antagonistic. Then again, prescriptions in which not even uniformity of size is maintained—shotgun prescriptions, in which BB is mixed with number 8, and even mustard seed—prescriptions invented on the principle of the sea captain, who gave to the sick sailor a little of everything in the sea-chest, saying, with an oath, that if the man died it was not his fault, as he had given to him (the sailor) a little of everything he had. From this to the abyss of nostrumism is a steep and slippery path; *facilis descensus Averni.*

Not only, however, do members of the profession stultify themselves by prescribing nostrums, but even more depressing is the fact that, never mind how worthless a remedy may be, the proprietor can almost invariably secure public recognition of excellence from men eminent in the profession. One class of drugs may be mentioned simply as an example. Except formalin solutions there is no disinfecting mixture sold which, in proportion to the price, is comparable

in power to the simplest disinfectants recognized by the pharmacopeia, and yet the markets of the United States are loaded down with proprietary disinfection solutions, most of them absolute frauds, many of them certified to by leading members of the profession. These certificates have not been paid for, but have been free gifts from the members of the profession to the various firms. The profession is not corrupt, it is disgustingly weak—feeble as the molasses and vinegar drink of our childhood. Many of these certificates have an enormous pecuniary value; they have been given simply because some smooth-tongued commercial traveler has asked for them. The doctor has received no equivalent for that which he has given, but none the less has he in the giving stultified himself, degraded his profession, and assisted in the swindling of the public. Of those who have given certificates for disinfecting solutions, how many have ever made any bacterial experiments upon the solutions in question. Probably not one has ever carried such a trial to a careful comparison of the proprietary solution with that of an ordinary disinfectant, or considered the question of relative price. Moreover, the doctor who gives a certificate based upon a thorough trial has no guarantee or reason for believing that the solution furnished one year after date, with his certificate attached, will be the same as that which he used in his experiment. So far as I can remember, personally I never gave but one certificate concerning a drug or a commercial article, and so far as I know no greater scoundrel ever misused a certificate than did the one to whom I gave this lonely representative of personal weakness. It ought to be a first principle in ethics that no doctor should be allowed to give a certificate, a commendatory letter, or anything else recommendatory, to any proprietor of anything under the sun. It is a great pity that the medical profession has not such a public sentiment as to make the giver of a certificate feel that he risks ostracism by the giving. Esau, the Hairy One, was a pattern of shrewd foresight

contrasted with many an American doctor; he did get one comforting mess of pottage for his birthright; the American doctor hears only some words of honeyed flattery in the secrecy of his office, but is deaf to the derision in the outer world of those who have been "chestnutting" with him.

One undoubted cause of the increase in the use of proprietary and patented medicines by the profession is the production of patented drugs which are of such peculiar therapeutic value that, whether he will or not, the doctor must use them. The difficulty of the situation is, however, more apparent than real. All the physician has to do is to make it a governing principle that the only patented or proprietary drugs he will use shall be simple organic principles.

The golden rule of living should be: give no certificates; use no proprietary combinations of medicines. When we have done this then with polished weapons can we make war upon those who batten on the misfortunes of mankind.

Having reached this principle for our own government, we are in a position to consider for a few moments the subject of the general governmental control of proprietary medicine; a subject which is at the present made more vital by the fact that the laws of the United States regarding it are now under consideration by the Federal authorities, for the purpose of reorganization. The importance of the subject can hardly be estimated; hungry is the Anglo-Saxon throat for medicine; never to be stopped is the clamor of overcredulous, suffering humanity.

According to the *Drugman*, while thirty years ago the annual yearly revenue in Great Britain from taxes on patent medicines was $210,000, in 1892 it was $100,500,000, and the tide is still rising. I have no American statistics to offer you, but certainly the average Yankee is not in his hunger after pills and draughts much behind his transatlantic cousin. The success of the various proprietary remedies rests in the greater part upon a very curious fact, namely, that

the embalmment of a lie in printer's ink makes it to the ordinary Anglo-Saxon mind as genuine and as indestructible as an Egyptian mummy; and this trait of character belongs as much to the American as to the Englishman.

Whether it be possible by law to control in this country the enormous volume of the patent-medicine trade is very uncertain; in France, before a proprietary medicine can be put upon sale the formula and the process of its production must have been submitted to a committee of the Academy of Medicine, which committee can alone give permission for its sale, and has the power of fixing the highest price at which it can be sold. Certainly the American proprietors, in the ardency of their zeal for the salvation of their fellow-men by drugs, would not be willing to be hampered by such bounds as these. It is possible that a law recognizing the registration of medicinal formulas, and perchance even one making it a requisite that the formula of the patented medicine shall be printed upon the package in which the medicine is sold, might be enforced to some extent if once enacted; but at present the enactment of such a law seems even more improbable than its enforcement.

After all, there is no reason why the medical practitioner, as a medical practitioner, should be especially interested in this matter. As already urged, proprietary formula compounds, protected in any way by law, are or ought to be an abomination to the professional mind; but at this time to attack their use by the people would be quixotic. The traffic in lies will never cease. The gullibility of the human nature is unfathomable, and if we as a profession would only keep our own garments from being defiled, we could well afford to take no heed of the doings of the public, or the wolves that prey upon them. When the sheep wish to be devoured the wolf is scarcely to be blamed. On the other hand, the profession is and must remain vitally interested in all legal questions centering around distinct organic principles.

The question whether patents should ever be taken out by members of the professions has been so much discussed that every one must at least acknowledge that there are to this, as to other problems, two sides, but at present we are not immediately concerned with this subject, since the inventors or discoverers of new principles are chemists rather than practitioners of medicine. The reasons that justify the existence of patent laws at all apply to the work of these men as strongly as they do to the work of mechanics. Viewing the matter as the lawgiver must view it, the chemists are certainly entitled to the protection of their labor; but what shall the protection be?

The intent of the patent laws is that the discoverer shall be encouraged by the temporary right to his discovery, but that such right shall eventually lapse, so that the invention shall become the property of the whole people. The application of this principle throws out at once the patenting of the names of drugs, since the name which usage has given to a remedy will, for the mass of the people and even of the profession, adhere permanently to the product. Antipyrin, for example, will be known in commerce as antipyrin to the end of the chapter. Life is too short, and brain matter too precious, to consume either in saying phenyl-dimethyl-iso-pyrazolone. I have never heard of an American physician using the name adopted by the British pharmacopeia, "phenazone;" and I can not remember having seen this name printed even in an English medical article. Now, if copyrights could be made to attach to the name antipyrin, the patent for antipyrin would for practical purposes be thereby indefinitely extended.

No one has recognized more clearly than have our pharmaceutic manufacturers the force of considerations such as those just given, and the effort has been both persistent and widespread to obtain permanent proprietorship of a remedy by making its popular name a trade-mark, and in this way to destroy the intent of the patent law by obtaining through the

laws governing trade-marks an exclusive right which has no ending.

A trade-mark is, however, the sign of the brand and not of the article. Originally it was a design; a lion rampant stood for a lion brand of starch, sugar, or what not; and the design, which was the sign of the product of the firm's factory or series of factories, was naturally the property of its inventor. Now it is claimed that a name may be made a trade-mark and registered as such. This claim, however, probably can not be sustained even under the present law. In the decision rendered by the United States supreme court in the case of the Columbia Mill Company of Minnesota vs. W. W. Alcorn & Co. of Pennsylvania, the presiding judge said: "That to acquire the right to the exclusive use of a name, device or symbol as a trade-mark, it must appear that it was adopted for the purpose of identifying the origin or ownership of articles to which it is attached, or that such trade-mark must point distinctly, either by itself or by association, to the origin, manufacture or ownership of the article on which it is stamped. It must be designed, as its primary object and purpose, to indicate the owner or producer of the commodity and to distinguish it from like articles manufactured by others." In another case it was affirmed by the justices of the supreme court that: "The office of the trade-mark is to point out distinctly the origin of ownership of the article to which it is affixed; or, in other words, to give notice as to who was the producer."

These decisions would appear to the lay mind to be sufficiently distinct and authoritative, but decisions of the supreme court can, I suppose, be countermanded, so to speak, by subsequent decisions of the same tribunal; and certainly the law should be made so clear and positive in its statements that no manufacturer would think of attempting evasion.

The question as to what the patent law should be in regard to medicinal principles invented or dis-

covered is not easy to answer. Should there be product patents or should there be process patents? In other words, should the substance antipyrin (product) have been patented as a product, or should only the process by which the original discoverer produced antipyrin be capable of being patented? It is evident that the difference between process and product patents is not only clear but of vital importance to the inventor or discoverer. Supposing that an organic principle, of practical value in medicine, has been discovered and produced by a certain process; if the discoverer patents the drug he secures proprietary rights in its sale for the whole term of years provided for by the patent law. If, however, he can only patent the process of production, he acquires proprietary right only until the time when some other chemist invents a new process which may be better or worse than the old, but which enables the second chemist to compete with the originator, so to speak, who therefore practically loses the value of his patent. This time may be three weeks, it may be three years, it may be the whole term of the patent.

The American Pharmaceutical Association has, I believe, expressed itself as being in favor of granting process patents only. The American Pharmaceutical Association is a most respectable, indeed a highly honorable, body, but it is to the interest of its members that the patent rights of chemic investigators shall be as loosely held as may be, and therefore it is possible that the minds of its members are unconsciously biased. I can not myself see why the man who practically invents a new principle such as antipyrin should not have the same inalienable right to the result of his labors as had he who first placed the eye in the front of the sewing needle. It is probable that the law ought to recognize in its protection two classes of new remedies. No vegetable or mineral substance which exists pre-formed in nature, ready for the use of man, should be capable of being patented. It can in no sense be called an invention; the discovery of its

medicinal value is almost always largely the result of chance, not of foresight. A process for the extracting from a drug of its active principle might, however, be patented, so that process patents might be allowed for medicines of this class. On the other hand, when by synthetic methods a substance which is not found freely existing in nature has been made by a chemist, such substance may well be said to be an invention of the chemist, and to be therefore capable of patenting.

In Germany there are no product patents allowed, only process patents; but in Germany it is the habit of the courts to be very liberal in the interpretation of patent rights, throwing the whole burden of proof upon the inventor of the second or new process, and requiring his process to be absolutely diverse from the first; whereas in the United States the courts narrow as far as possible the rights of the patentee, so that the new or second process may survive judicial decisions, although it was really founded upon the first process which had received the patent. This, at least, is the allegation of the chemic manufacturing houses of the country; exactly how correct it is only a long-time worshipper at the shrine of patent courts could say.

Finally, colleagues of the medical profession, the time allotted me by your patience has expired, and I must leave the subject of my paper, though it be scarcely more than touched upon. To me this seems for us the final sum of the whole matter: so long as there be trout to rise, so long will there be fishermen to make their deadly casts. The credulous, the ignorant, the men and women who want to be deceived, the despairing, who grasp at every floating straw, will exist until the coming of the millenium demonstrates that through the succession of ages the suffering of innumerable human units has perfected human nature; but as members of the medical profession, let us see to it that we in no way aid those who, serving the father of all liars, wax rich and wanton on the miseries of their fellows.

1925 Chestnut Street.